IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 32959 of 2006(W)

OS.326/2002 of ADDL.MUNSIFF, KASARAGOD

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PETITIONER:

ABOOBACKER, S/O. BAVUTTY,
BALLAMPADY, ICHLAMPADY VILLAGE, P.O. KODIYAMME,
KASARAGOD TALUK, KASARAGOD DISTRICT.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE
SMT.O.K.SANTHA

RESPONDENTS:

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1. YUSUF ALIAS ISUBU, S/O. MOHAMMED,
RESIDING AT DARBARKATTA, KODIYAMME P.O.,
ICHLAMPADY VILLAGE, KASARAGOD TALUK,
KASARAGOD DISTRICT.

2. THE SPECIAL TAHSILDAR (LR),
KASARAGOD (LAND TRIBUNAL, KASARAGOD).

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.32959 OF 2006

Dated 12th December 2006

JUDGMENT

Petitioner is defendant in O.S.326/02 on the file of Additional Munsiff court, Kasargod. Question of Kudikidappu claimed by petitioner was referred to Land Tribunal under Section 125(3) of Kerala Land Reforms Act. Land Tribunal while enquiring the said reference in R.C.1/2005, deputed special Revenue Inspector to submit a report. Revenue Inspector filed a report. Petitioner filed Ext.P4 objection to the said report praying for a direction to Special Revenue Inspector to file a further report which was rejected by the Land Tribunal. This petition is filed under Article 227 of Constitution of India for a direction to second respondent to quash Ext.P4 order and to remit the report as sought for in the objection.

2. Learned counsel appearing for petitioner was heard. Arguments of learned counsel appearing for petitioner was that as per the report of Special

Revenue Inspector, petitioner has a fractional share in another property and from the report it cannot be concluded whether a hut could be erected in that property and therefore Land Tribunal should have referred the report back to Special Revenue Inspector for a further report. Learned counsel also argued that petitioner has disputed the fractional share alleged by the Special Revenue Inspector. Any way that is a matter to be decided by Land Tribunal.

3. The Land Tribunal has necessarily to find whether the alleged property over which petitioner has fractional share, is sufficient to erect a homestead. That is definitely a relevant question to be decided, while considering the claim of Kudikidappu raised by the petitioner. In Ext.P4 order Land Tribunal has only stated that the report is not to be referred back as sought for at this point of time. I do not find any necessity to issue any direction in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India. It is made clear that if Land Tribunal finds that petitioner is having any fractional share in any other property the question whether that property is fit enough to

construct a residential building is also to be decided by the Land Tribunal. While so Land Tribunal has to decide a report is to be called for on this aspect at that stage.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.